IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

FACULTY, ALUMNI, AND STUDENTS OPPOSED TO RACIAL PREFERENCES,))
Plaintiff, v.))) C.A. No. 1:18-cv-12105-LTS)
HARVARD LAW REVIEW; HARVARD LAW SCHOOL; PRESIDENT AND FELLOWS OF HARVARD COLLEGE; BETSY DEVOS, IN HER OFFICIAL CAPACITY AS U.S. SECRETARY OF EDUCATION,))) Oral Argument Requested)))
Defendants.	,)

MOTION TO DISMISS PURSUANT TO RULES 12(b)(6) AND 12(b)(1) FOR DEFENDANTS HARVARD LAW SCHOOL AND PRESIDENT AND FELLOWS OF HARVARD COLLEGE

Defendants Harvard Law School and President and Fellows of Harvard College ("Harvard") respectfully move to dismiss this action under Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1). The grounds for this motion, which are explained in detail in the accompanying Memorandum of Law, include the following:

1. The Complaint fails to state a claim upon which relief can be granted. It pleads no facts from which the Court could infer that Harvard is liable for a policy adopted by the Harvard Law Review Association ("HLR"), a separately incorporated and separately governed entity that Harvard does not operate. And even if Harvard could be liable for HLR's policies, the Complaint pleads no facts from which the Court could infer that Harvard is violating Title VI, 42

U.S.C. § 2000d, or Title IX, 20 U.S.C. § 1681(a). The Complaint therefore should be dismissed

under Rule 12(b)(6).

2. The Complaint fails to allege that Plaintiff Faculty, Alumni, and Students

Opposed to Racial Preferences ("FASORP") has Article III standing to bring and maintain this

action, both because it fails to plead that any member of FASORP has suffered or will suffer any

legally cognizable injury caused by the challenged practices and redressable by a judgment in

FASORP's favor and because it fails to establish that FASORP is a genuine membership

organization that represents the interests of its members. This action should therefore be

dismissed for lack of jurisdiction under Rule 12(b)(1).

Harvard therefore respectfully requests that the Court dismiss FASORP's complaint with

prejudice.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Harvard respectfully requests oral argument of this

Motion.

Respectfully submitted,

/s/ Seth P. Waxman

Seth P. Waxman (pro hac vice)

Paul R.Q. Wolfson (pro hac vice)

Daniel Winik (pro hac vice pending)

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Attorneys for Defendants Harvard Law School and President and Fellows of Harvard College

Dated: December 17, 2018

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that on December 13, 2018, I conferred by phone with Plaintiff's counsel in a good faith attempt to resolve or narrow the issues involved in this motion.

/s/ Felicia H. Ellsworth
Felicia H. Ellsworth

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

/s/ Seth P. Waxman
Seth P. Waxman